

1991: THE CHALLENGE
THAT MUST BE MET

Symbol Of The Future For Alaska Natives

For Alaska Natives, 1991 has come to represent the future of their traditional relationship to the land. Some even see 1991 as a reflection of Alaska Natives' ability to maintain their culture, heritage and identity as distinct peoples.

For all of its implications, however, only one thing will happen on December 18, 1991. On that date, the Native corporations organized under the Alaska Native Claims Settlement Act will cancel all outstanding stock and issue new stock to the shareholders.

The new stock will be just like stock in any other American corporation. Shareholders will be able to sell it, pledge it as collateral for a loan, and do anything else that people do with corporate stock.

That "cancellation" of the old, restricted stock will set off other changes as well. The Native corporations will no longer be automatically exempted from federal securities laws. Different corporations would probably face different regulations, but the reporting requirements of the federal Securities and Exchange Commission can be complicated, costly and time-consuming.

When the corporations issue the new, unrestricted stock, any non-Natives who owned stock before -- through inheritance or divorce settlements -- will be able to vote their stock for the first time.

The prospect of unrestricted stock which can be bought, sold, taken to pay bad debts or taxes the shareholder owes, raises the biggest fears among the Native community.

Some shareholders may be offered large amounts of money for their stock. If enough Native shareholders sell their stock to non-Natives -- whether to individuals or to other, non-Native corporations -- Natives will lose control of the corporation and the land the corporation owns.

If that happens, the Native corporations would probably be very different than they are now. Land would probably not be preserved for subsistence hunting, fishing and food gathering. Shareholder programs -- such as scholarship programs, job banks and cultural founda-



tions -- would be ended. The corporation's land and other assets would be used only for the profits they could generate, without regard for the impacts on, or interests of, Natives.

But even under existing law, there are some things that Native corporations can do to give themselves a better chance to remain Native even after 1991. Some of those options were spelled out in amendments to ANCSA that were made in 1980, as part of the Alaska National Interest Lands Conservation Act (also known as "d-2," ANILCA or the Alaska Lands Act).

Under the options in ANILCA, a Native corporation may continue the ban on voting by non-Native shareholders and it may require that the corporation, or the corporation and the shareholder's immediate family have the first chance to buy stock that a shareholder wants to sell. If a corporation wants to use one or both of those options, it must amend its articles of incorporation, which requires approval by two-thirds of the shareholders.

Either change must be in place before the old stock is cancelled on December 18,

1991. While those options may be of some help in keeping the corporations under Native ownership, they would not ensure continued Native ownership, by any means.

(For more on stock protection, see story on page 3).

If no change is made, in ANCSA and if a corporation does not adopt restrictions, many Native shareholders will have to choose between offers of cash and holding on to their stock. If enough shareholders in a given corporation chose the cash, the corporation and its land would no longer be Native.

Although the key issue of 1991 is stock "alienation" -- the ability to sell or lose stock -- 1991 will also have profound effects on the future of Native land.

Land owned by the Native corporations can be lost in a variety of ways now. It can be sold, leased, exchanged or, in the case of developed land, it can be taken to pay taxes or debts owed. Land can also be lost through adverse possession -- if somebody continually trespasses on land and the landowner does nothing to stop it, the landowner can lose the

property rights. Land can also be taken by government through eminent domain, although the government must pay for it.

But if enough shareholders sell their stock after 1991, Native land will face an even larger threat, because Natives will have no claim to it and no say in what happens to it.

Two other issues are associated with 1991, as well. They are special benefits for Elders and participation by New Natives, Natives who did not receive stock under the settle-

ment act because they were born after it was passed.

If the Native corporations and their shareholders want to provide special benefits for Elders and if they want to open the way for New Natives to own stock, other than through inheritance, action should be taken before the restricted stock is called in.

After 1991, it will be much more difficult to institute such special provisions for Elders and New Natives.

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This special supplement to the Tundra Times has been prepared by the Alaska Federation of Natives for distribution throughout Alaska's Native community.

Within these pages are articles about each of the issues related to 1991: stock alienation, land protection, New Natives, Elders and the corporate structure.

Other articles address the draft resolutions prepared for the 1984 AFN Convention, interviews with Native leaders, the history of the Alaska Na-

tive Claims Settlement Act (ANCSA), major problems in ANCSA, and the work on 1991 done thus far.

This supplement is designed to offer a comprehensive source of information about ANCSA, 1991 and the issues of concern to Alaska Natives. Only with a broad base of information and understanding can the Native community succeed in efforts to ensure that ANCSA remains a tool that is responsive to Native needs and goals, as determined by Natives, themselves.

"What's Wrong With ANCSA?"

From the moment the ink started to dry on President Richard Nixon's signature on the Alaska Native Claims Settlement Act (ANCSA), the people who had fought for ANCSA knew there were problems. Still other problems emerged over the years.

The Congress addressed some of the problems in subsequent amendments to ANCSA, while others have been resolved by the Native corporations, themselves.

For example, as originally written, undeveloped Native corporation lands were exempted from taxes until after 1991. But since the conveyance process has taken so long, Congress amended ANCSA to extend the tax exemption for 20 years after conveyance instead of 20 years after ANCSA was enacted.

Federal agencies' resistance to implementing ANCSA was one of the biggest barriers; Native corporations have had to spend time and money in court, fighting for lands they were entitled to under ANCSA.

Section 7(i) of ANCSA, which requires the regional corporations to share timber and subsurface revenues, posed yet another difficult problem, which has yet to be completely resolved. Although the regional corporations reached agreement about some of the 7(i) questions, there is still conflict over sand and gravel ownership.

There were problems in ANCSA and then there are what one Native leader calls "fatal flaws." The flaws are:

- 1) ANCSA's treatment of Native land as an economic asset, instead of as the basis of Native culture and survival;
- 2) ANCSA's division of Native people into two classes: those who received stock under ANCSA and those who didn't because they were born after it was passed;

3) The 1991 provision which opens the door for Natives to lose the benefits of ANCSA -- the corporations and the land.

Some people in the Native community today find it easy to blame problems and flaws on the Native leaders who fought for ANCSA. Some say that ANCSA was a "sell out" and that it was a ploy by non-Natives to eventually take control of Native lands and resources.

Yet, testimony of Natives during ANCSA negotiations and recollections since then do not support those accusations. (See "A Look Back," page 8).

ANCSA placed corporate leaders in a difficult position by making land a corporate asset. As an economic asset, the land should be used to produce profits for the corporation. Yet what of its subsistence and cultural value? Native corporation leaders try to balance those interests by using some land for its economic potential and preserving other land for subsistence use.

If the land remains a corporate asset and if Natives lose control of the corporations, the corporations would probably cease to consider subsistence and cultural values in their land-use decisions.

From the studies done so far, it appears the Congress' decision to cut off New Natives -- those born after ANCSA was enacted on December 18, 1971 -- from receiving stock directly, was an oversight. Congress did not want to create a perpetual enrollment process for subsequent generations of Alaska Natives. But it apparently assumed that Native shareholders would pass ownership and control of the corporations to future generations through inheritance, gifts and stock sales after 1991.

The decision to cut off enrollment has created two classes of Natives. Within many families, older children own stock and younger ones do not. The younger ones may inherit stock but they have no guarantee of ever owning stock or of having a say in how the Native corporation is run and how the land is used.

One of the basic goals of ANCSA was to provide continuing benefits to future generations of Alaska Natives.

But if current fears prove to be true -- if shareholders sell or lose their stock in some way -- future generations will have no claim to traditional lands, no say in how they are used, and at most, a legacy of cash from the sale of their parents' stock.

The problems and flaws in ANCSA may be clear, but solutions are difficult. While many shareholders believe that protecting the land is more important than anything else, there are others who may object to any change which would reduce the sale value of their stock.

While many shareholders believe that New Natives must be included, others believe that inheritance will take care of the problem.

While some shareholders believe that the corporate system cannot work and should be abandoned, many others believe that it is better to retain the corporate structure instead of starting all over again with something new.

Each possible solution has advantages and disadvantages. Some might be possible under existing federal and state laws, while others would require amendments to ANCSA or the state's corporate laws.

Articles in this supplement explain some of the potential solutions, as presented to AFN in a series of legal papers.

Protecting The Land

As 1991 approaches, the overwhelming concern of most Alaska Natives is their continued ownership of Native lands. Because most of the land conveyed to Natives under the Alaska Native Claims Settlement Act (ANCSA) is owned by the Native corporations, if Natives lose control of their corporations they will lose control of the land, too.

However, ANCSA corporation lands have been and are vulnerable to loss, in other ways, from the moment they are conveyed to the corporation. A corporation can sell part of its land, or trade it for other land. Land can also be lost involuntarily in several ways.

Land can be sold against the corporation's will to pay taxes owed by the corporation or to pay the corporation's creditors. It can also be taken by "eminent domain," which is the government's power to take land for a public purpose. However, the landowner must be paid for the land if it is taken under eminent domain.

Land also can be lost through "adverse possession," which means that if someone trespasses on the land for a number of years and the landowner does nothing to stop it, the trespasser can gain ownership rights to the land.

The Congress included several provisions in ANCSA to give some protection to Native corporation land.

Native land that is not developed, leased or pledged -- in other words, land which is not used for an economic purpose -- is exempt from state and federal taxes for 20 years after the land is conveyed to the corporation.

In 1980, the Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA). Section 906 of ANILCA establishes the Alaska Land Bank Program, which allows every village and regional corporation to put some or all of its land into the land bank.

If the corporation agrees not to develop, mortgage or lease

the land as long as it remains in the land bank, the land may not be taxed, sold to pay bad debts, or lost to trespassers through adverse possession. However, the land bank does not protect the land from eminent domain.

But there are two disadvantages to the land bank program: It requires the corporation to go through some government red tape to obtain a land bank agreement; and land cannot be developed or leased.

Also, only land owned by village and regional corporations is eligible for the special protections available through the land bank program. Land owned by other Native-controlled organizations, such as IRAs and traditional councils, is not eligible for the land bank.

Pursuant to a resolution passed at the 1983 AFN Convention, AFN studied how Native lands might be better protected from loss. The study looked at how land might be protected by transferring it from the corporation to a different entity.

If a corporation wants to transfer its land to another Native entity, it may do so if two-thirds of its shareholders vote to approve the transfer. Under Alaska law, shareholders who object to the transfer may claim "dissenter's rights" and demand that the corporation buy their stock.

If the land is transferred to a non-profit Native entity, it would be protected from being taken to pay for the corporation's taxes or debts. But transferring the land to a non-profit would not necessarily make it tax-exempt. Nor would that protect the land from being lost through adverse possession or eminent domain.

If a corporation transfers its land to an IRA or traditional village council, the land would not necessarily be protected from taxes, from loss to pay debts, from adverse possession and eminent domain.

Land transferred to an IRA (Continued on Page Twelve)



The land...

Photo by Rob Stapleton

New Natives Dilemma: Fairness or Dilution

When the U.S. Congress decided that only Alaska Natives alive in 1971 would receive cash from the Alaska Native Fund and stock in the Native corporations, it split Alaska Natives into two classes.

Estimates indicate there are now 20,000 Alaska Natives who do not own stock because they were born after the Alaska Native Claims Settlement Act (ANCSA) was enacted. By 1991, the number of excluded Natives may be as high as 40,000.

Those so-called "after-borns," or New Natives, may inherit stock but they cannot claim it as a birthright.

According to testimony before the Alaska Native Review Commission, Congress did not want to create a perpetual enrollment process. The cut-off date of December 18, 1971 -- the date ANCSA was enacted -- apparently was used because it was convenient.

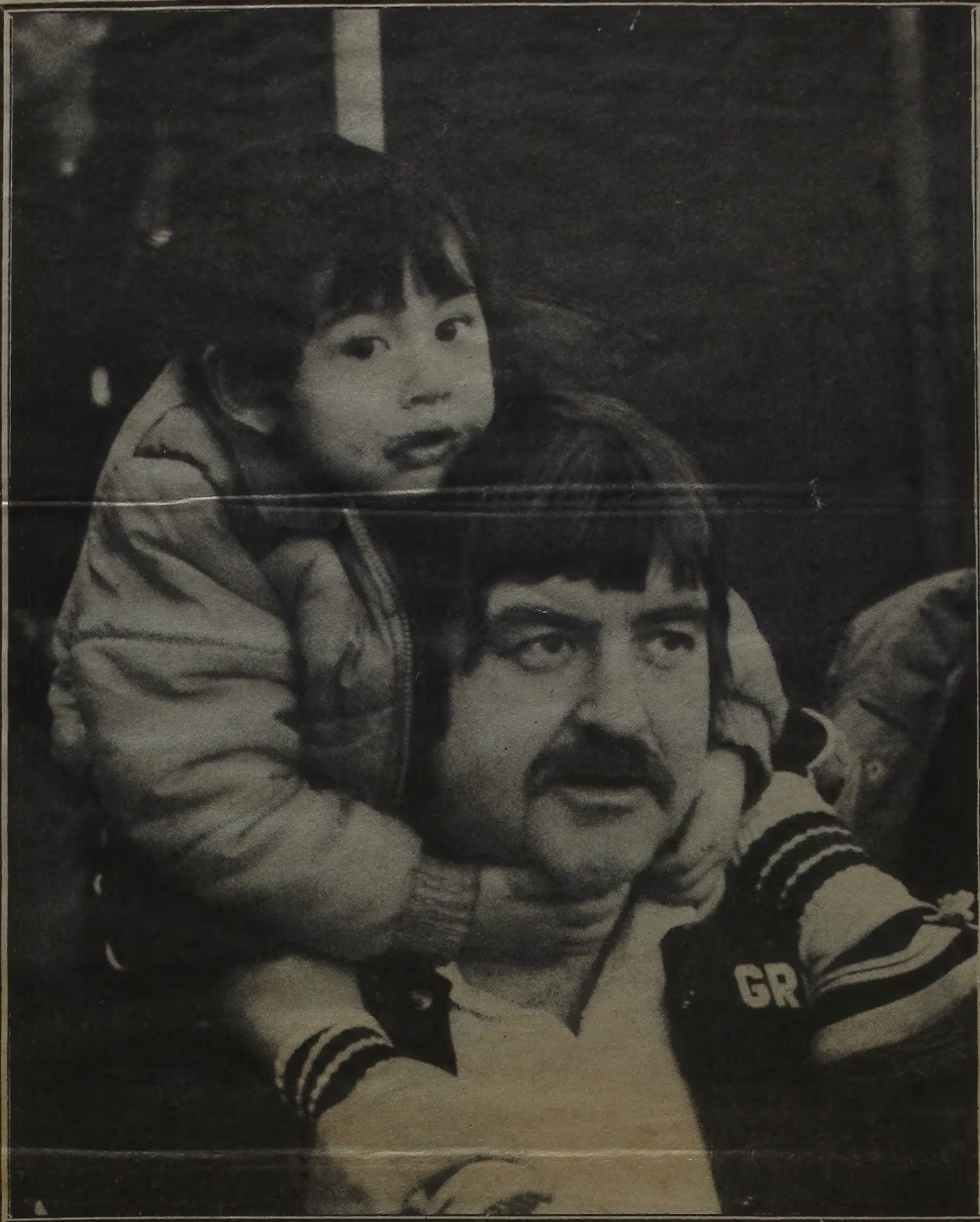
The Congress assumed that Natives born after that would inherit stock and, after December 18, 1991, could receive it as gifts from their parents or buy stock.

Yet there was and is no guarantee that Natives born after December 18, 1971, will own Native stock. Under the existing structure, if they do not own stock, they have no say in how Native lands are used or how the corporations are managed.

For them, ANCSA will be meaningless, if their parents sell the stock or lose it in some way.

Solutions to the problem boil down to a choice between fairness to New Natives and the economic interests of current shareholders.

If a Native corporation issues stock to New Natives free of charge, the sale value of existing stock will be "diluted," or re-



How will this child participate in ANCSA. . .

duced, because more people would be sharing the same amount of corporate assets.

The only way to maintain the sale value of existing stock would be for the corporation to

charge "book value" (a price determined by dividing the amount of assets by the total number of shares) for the New Natives' stock. But then, the New Native would have to have

the money to buy it, even though the original shareholders paid nothing for their stock.

The Native corporations are subject to state and federal corporate laws. Those laws raise three legal issues related to stock

offerings to New Natives.

The existing shareholders in a typical (non-Native) corporation sometimes have "pre-emptive rights." That means that if a corporation offers new stock for sale, the existing shareholders have the right to buy new stock at the same price it is being offered to others.

Pre-emptive rights could be a burden to a Native corporation which wanted to offer stock to New Natives, but it is much less of a problem than it could be because state corporate laws allow corporations to eliminate pre-emptive rights.

The second legal issue is "adequacy of consideration." That means that the corporation cannot give stock without charging at least a nominal, or small, fee for it.

The third legal issue is "limitation of purchasers." Normally, a corporation would offer stock to the general public. But the Native corporation would be offering stock only to New Natives and it probably would limit the number of shares each New Native could receive or buy.

Other, non-Native corporations have put restrictions on who can purchase stock, but none has made the kind of limitations -- based on race and number of shares -- which the Native corporations would be considering. It is not known whether such limitations would be challenged and whether such a challenge would be successful.

Native corporations which wish to offer stock to New Natives could do so, but without a change in state law or ANCSA, the corporation would be more vulnerable to a legal challenge.

Legislation to permit corporations to offer stock to New Natives would not guarantee protection against legal challenge, but it would reduce the risk.

Stock alienation - protection or profit?

The corporate structure used to implement the Alaska Native Claims Settlement Act (ANCSA) and stock alienation after 1991 are closely tied together.

ANCSA was enacted with several main goals: to settle Native land claims, to provide Alaska Natives with the tools to control and improve their economic status, and to set up a system to provide continuing benefits to future generations of Natives.

A corporate structure, with Natives as the corporate shareholders, was used to implement the settlement. The Congress' underlying assumption and expectations appear to have been that ANCSA, through the Native corporations, eventually would merge Alaska Natives into the American social and economic mainstream.

But that would take time, so the Congress put a 20-year restriction on Native stock to give the corporations time to organize and do business free of the threat of takeover by

non-Natives. Under the stock restriction, shareholders cannot sell or otherwise transfer ("alienate") their stock until after December 18, 1991.

There are some exceptions to the ban on stock alienation. Stock can be inherited when the shareholder dies and it can be taken by court order in a separation or divorce settlement or to pay child support with the dividends.

Although ANCSA stock was to be owned only by Natives, non-Natives may own stock through inheritance or divorce settlements, but non-Native shareholders cannot vote their stock until after 1991.

The original wording of ANCSA said Native corporations must call in the stock in 1991 and reissue new, unrestricted stock on January 1, 1992. But the wording was changed and expanded in an amendment included in the 1980 Alaska National Interest Lands Conservation Act (ANILCA, also

known as "d-2" or the Alaska Lands Act).

The new wording says the old stock will be cancelled and new stock issued on Dec. 18, 1991. The new stock will be subject only to restrictions imposed by the corporation, itself. It specifically described two restrictions that corporations can impose through amendments to their articles of incorporation. Any such amendment requires approval by two-thirds of the corporate shareholders and the change must be made before the old stock is called in.

The two restrictions authorized in ANILCA are:

1) The corporation may let only Native shareholders or descendants of Natives vote their stock, even after 1991. Non-Natives could own stock but would not have voting rights.

2) The corporation may require that any stock a Native wants to sell must be offered first to the corporation or to

the corporation and the shareholder's immediate family. This "right of first-refusal" would give the corporation or the shareholder's family an opportunity to purchase the stock and thus keep it in Native ownership.

If a corporation adopts the first option, (to continue the ban on non-Natives voting their stock), non-Natives will be less inclined to buy stock since they would not have a voice in the corporation's decisions and activities. But that restriction would not prevent non-Natives from buying stock.

The second option, the right of first-refusal, would help to keep the stock in Native ownership, but only if the corporation or the shareholder's family have enough money to buy the stock being sold.

While corporations might have enough money to buy stock from some of their shareholders, not even the most financially successful of them would be able to handle a

deluge of stock if many shareholders want to sell.

Additional protections against loss of stock to non-Natives would require changes in the corporate structure and probably amendments to ANCSA, as well.

Although the sale of Native stock is a major concern, there are ways Natives can lose their stock after Dec. 18, 1991 without voluntarily selling it. For example, a court could take the stock as payment for a bad debt or taxes owed. If a shareholder sold any of his stock, he would be taxed on the money he received for it. If he couldn't pay that tax, his remaining stock could be taken to pay the tax.

Those problems can only be solved by amending ANCSA to put a total ban on stock alienation to non-Natives.

The prospect of Native shareholders willingly selling their

(Continued on Page Twelve)

The corporate structure -- does it fit?

When Native leaders were negotiating with the Congress and the state for ANCSA, most of the attention was focused on how much land Natives would receive title to and the locations of the land selections.

The second priority was how much money the Natives would receive in payment for lands given up under ANCSA. But the decision about how ANCSA would be implemented — the structure — was not totally ignored in the negotiations. Different types of implementing structures were considered.

Both the Native community and the Congress saw ANCSA as an opportunity for Alaska Natives to improve their economic and social well-being. It was strictly a land settlement, but even so, it was seen as a path toward economic development, increased employment opportunities and improvements in the living standards of Native communities.

All of the parties involved wanted to make ANCSA a meaningful settlement, with lasting impacts and benefits that would

continue through subsequent generations of Alaska Natives.

Most of the earlier land settlements with tribes in the lower 48 had involved reservation systems and per capita distributions; none had been very successful and many were seen as dismal failures.

Those past failures, combined with the political atmosphere of the time — the War on Poverty and economic opportunity as the key to minority problems — made the Congress eager to try something different in Alaska.

Earlier drafts of ANCSA had different implementing structures. One proposal would have created two statewide organizations: a for-profit corporation and a non-profit entity to address social problems. Another proposal would have allowed IRAs to own and manage the ANCSA assets which went to villages.

What emerged, of course, was a system of 12 regional corporations, parallel to traditional geographic boundaries of the major Native groups, and some 200

village corporations which had the option of being for-profit or non-profit. None chose to be non-profit.

If the Native corporations and their shareholders want to change the corporate structure, they must either do so within the boundaries of state law or seek changes in state or federal law.

* * *

The Native corporations organized under ANCSA are quite different from the "typical" American corporation. The business decisions of a "typical" corporation are based only on the bottom line: profits.

Shareholders in a typical corporation expect only two things — dividends and increases in the value of their stock. They do not want their corporation to spend money on scholarship programs or benefits for Elders or job banks. They do not want the corporation to make a special effort to employ shareholders.

Native corporations, on the other hand, offer such shareholder services and their business

decisions take into account the needs of their shareholders and non-cash values of the land they own. Native corporations must make money to survive. But they must constantly balance profits against the needs and desires of their shareholders; shareholders who expect more than just dividends.

The "typical" corporate values — individual gain and a profit motive which excludes other, non-economic benefits — are foreign and sometimes contrary to traditional Native values. Natives traditionally value the well-being of the community, sharing, and respect for others, especially Elders.

Some Alaska Natives want to eliminate the corporate system because it does not reflect Native values, especially the traditional Native respect and attitude toward the land.

At the 1983 AFN Convention, delegates told AFN to study the legal and practical implications of alternatives to the corporate structure. The study identified some of the alternatives and the legal questions that would

be raised by converting to them.

Conversion of a Native corporation, or its assets, to a tribal entity — such as an IRA or traditional village council — would raise a fundamental policy question. In ANCSA, the Congress made it very clear that ANCSA was not to be used to create any permanent, racially-defined institutions. But ANCSA did not repeal the application of the Indian Reorganization Act in Alaska. The Indian Reorganization Act affirms the rights and powers of Native groups, which are racially-defined institutions, so there is a contradiction between ANCSA and the IRA.

The political atmosphere right now, both in Washington and in Alaska, is unsympathetic to the resurgence of tribal structures.

If that unfriendly political atmosphere were to change and if the Congress were willing to see the corporations or their assets converted to tribal entities, other questions would remain because the legal status of IRA lands in Alaska is very cloudy. (For more on land trans-

(Continued on Page Twelve)

Elders

One issue is associated with 1991 even though it is not directly related to stock alienation and land protection. The issue is a question: Can Native corporations provide special benefits, in the form of cash payments, to Native Elders?

In the past there was little need to be concerned about the welfare of Elders. They were revered and respected by their families and their communities and their needs were met through the traditional sharing of village resources.

As Native villages turn, at least in part, to cash-based economies, there is less certainty that Elders' needs will be met. As shareholders in the Native corporations, they may receive dividends, but many people are worried that Elders will have passed on by the time the corporations are successful enough to distribute significant dividends.

In response to these concerns, delegates at the 1983 AFN Convention passed Special Resolution 83-06, which directed AFN to study whether and how the Native corporations can provide benefits to Elders.

Several village corporations in the Bering Straits Region have instituted life insurance annuity programs which allow them to distribute monthly payments to their Elders. However, research on the issue has shown that a Native corporation does not need to set up such a program in order to provide cash benefits to its Elders.

A corporation may offer cash benefits to a special class of shareholders — in this case, Elders — by amending its corporate articles. Such an amendment requires a vote of the shareholders and two-thirds of

those voting must approve the amendment.

However, such cash benefits would not be allowed if by doing so, the corporation would become insolvent. In other words, the corporation must have enough money to continue operating and provide cash payments to Elders.

Even if a corporation does provide cash payments to Elders, a problem arises because those payments are considered income. By receiving a monthly payment from his corporation, a Native Elder could lose benefits he now receives from the state or federal government. For

example, he may receive food stamps and the amount he receives is determined by his income. If his income is raised by the corporation's cash payment, he might receive fewer food stamps or none at all.

Because of that problem, the 1983 Convention Resolution directs AFN to seek legislation so that any such corporate benefit to Elders would not be considered as "income" for the purposes of eligibility for federal or state assistance programs. If that effort is successful, Elders would not lose assistance just because they receive cash bene-

fits from their corporation.

However, it appears very unlikely that the Congress would agree to exempt cash payments from eligibility determinations, because the U.S. Treasury Department would strongly oppose it.

But there are other ways, besides giving cash payments, that corporations can help their Elders. Indeed, several non-cash benefits are being provided now.

At least five regional corporations sponsor Elders conferences and pay travel expenses for the Elders attending them.

One regional corporation, NANA, also pays travel expenses for Elders to participate in other special events.

Another regional corporation, Cook Inlet Region, Inc., aided construction of low-cost housing for Elders by selling land to the Cook Inlet Housing Authority, which then built the housing with a grant from the U.S. Department of Housing and Urban Development (HUD).

However, the low-cost housing is open to non-Native elderly as well as Native Elders because HUD grants may not be limited to only one ethnic group.



Dora and Jerry Kalohe (Brevig Mission) at 1983 Bering Straits Elders Conference.

Photo by Lora Kosell

Then and Now: Three leaders evaluate ANCSA

During the 1991 retreat in September, AFN interviewed three of the participants who were active in the ANCSA effort about their perspectives, then and now.

Byron Mallot, Al Ketzler, Sr. and Willie Hensley were among the key figures in the push for a Native land settlement. They have been active in the implementation of ANCSA, in their respective corporations, and in the work on 1991.

The questions and their answers are below.

Question: If you knew then what you know now about how ANCSA works, would you have tried to do things differently?

Byron Mallott: Yes, I think a number of features could have been strengthened. I think land transfer should have been more automatic, and it should have happened much faster. The same holds for distributions of money from the Alaska Native fund.

I think ANCSA, at the outset, should have made a special provision for Elders, and the framers of it should have recognized that the inherited stock would not necessarily flow directly to the descendants. The issue of those born after 1971 should have been resolved within ANCSA, instead of leaving it to the corporation to resolve.

I think there should have been a feature built into ANCSA to require and fund shareholder information programs at the outset, so that Natives could learn early on about the complexities and details of the act.

The 20-year provision on stock alienation is probably too short. I think the per capita distribution should have been more than it was; maybe 25 percent of the proceeds instead of 10 percent.

A higher cash distribution might have prevented the problems of unmet expectations and people's feelings that they haven't benefitted directly from the act. A higher per capita distribution could still have left the corporations with sufficient capital to be viable.

The corporate structure turned out to be much more complex and difficult to deal with than anyone dreamed of. Virtually no one in the leadership had a sense of what for-profit corporations were, especially in the context of land ownership.

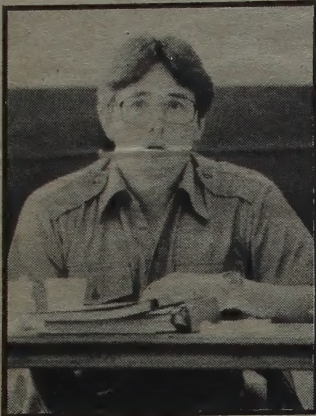
Al Ketzler, Sr.: If I had known as much about the business world then, I would have opted for some different form for the settlement to take. What I would rather see is a membership organization where, if you are a Native, you're in and if you die, you're out.

There would be protection, especially for Indians still living off the land. What you see now is very few people benefitting from the act. The only real benefits passed down are to the people who have jobs in the corporations.

I'm all for taking the land out and putting it in another corporation and giving the land

some kind of protection so the future generations can have some base to work with.

Willie Hensley: There are lots of things I would change if we had the power. The changes would go to the structure, the relationship between the villages and what you might call the tribes. I hate to call those groups "corporations." We are not involved with the concept of corporations despite



Byron Mallott

the fact that we work with it.

I would have spent more time on the groups, the tribal groups, the broad category of Native people - north and south Eskimos. There was a hit-and-miss job of carving up the state. The truth is that Congress was very much against a form of tribal government and having it in any form. I know people identify with the villages, but in order to survive you've got to have a tribal conscience which helps the group to survive and deal with the rest of the world.

What I'm saying is we have no - or very little - repository for what I call the Native spirit, the tribal spirit, because the institutions we deal with are western. Congress made no effort to deal with our culture, our identity needs.

On the other hand, it has always been my feeling that this is an area where it should not matter. Because it is the responsibility of the leadership to provide for the survival and accommodate ethnic and cultural needs. The sad thing is that the corporate institution narrowed the focus of the leadership and perception of tribal members.

Question: Could ANCSA have been different?

Mallott: One almost had to have been there at the time to understand the circumstances. There was a tight time frame. There was much movement on the act, because of development at Prudhoe Bay and the effort to obtain rights-of-way for the Trans Alaska Pipeline. It brought juxtaposed interests together. The state had an economic interest. The oil industry and the federal government did, too.

All of the interests were arrayed along side Natives, for the purpose of achieving a settlement. There was a strong recognition that the claims had to be dealt with before Alaska development could proceed.

Those were some of the

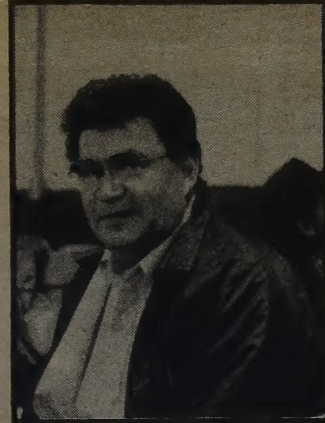
circumstances of the time, but there were also the circumstances of the players. We had a compassionate Secretary of Interior in Morris Udall and an Alaskan who succeeded him. A series of capable people focused on the issue.

The question is really, could that whole chapter of events and circumstances been replicated at any other time? I'm not sure. If one of the parties had been intransigent, then realistically, the settlement would have been imposed on Natives, without their active participation. It would not have been anywhere near as definite as it was and it's likely that what we would have today would be involved in litigation.

That the Natives were able, within constraints, to maximize what they achieved - that's the miracle of ANCSA - that the Natives were able to achieve so much.

Ketzler: I'm not sure. The impetus we had at the time was to do our own thing. We were dealing with people we had - consultants, attorneys. The corporation idea evolved. Back then, we didn't know about business. It sounded good but the concept was placed on a Native community where it was totally foreign to the culture.

Hensley: It was a hectic period. It is a darn near miracle this got off the ground. Once we created the wave, we had to stay on top. It was fast-moving and if we hadn't



Al Ketzler, Sr.

stayed on top we would have gone under.

We were ill-prepared for what occurred, the rapidity and the lack of resources.

We dealt with the western influence and mostly, we tried to do it in an acceptable fashion. We tried to work within the system and we found the system was responsive. Not in every detail, but then you never get all of what you want.

Question: What would you like to see happen regarding 1991? What do you think will happen?

Mallott: Whatever is done has to take into consideration the view that the land should be maintained in Native ownership in perpetuity. Whatever accord is reached has to deal with that expectation of Natives. It is not a recent thought. It flowed from the first conver-

sation about ANCSA.

Another issue is finding ways within the competitive environment of today to make Native corporations viable. Not to gain special advantages, but to look at those things that make us unique and combine them, balance them with features that make it economically successful in the business world.

Ketzler: I hope to go for resolution No. 7 (the 1991 resolution on land protection, drafted at the retreat) and I think it will have a chance to pass. I would be willing at this point to take the land out of the corporation and let the corporation boards play with the other assets.

Hensley: I would like people to realize that 1991 is just a date. The corporate assets are significant but they are not all-important. Maintaining the tribal spirit and culture is what it was about in the beginning and in my opinion, that's what it is still about.

Also, we have to recognize that we have to use everything to survive in the social, political and economic system. If we don't have a strong tribal spirit, we'll be dead. If we don't have that spirit, it won't matter if we lose the money.

Question: People have talked a lot about the expectations that Alaska Natives had about ANCSA; that maybe they were not realistic. What do you expect from ANCSA and from the corporations - assuming the basic structure remains the same - in the near and long-term future?

Mallott: We were realistic at the time but ANCSA was not like anything the Native people had ever experienced.

They wanted to control their own destiny, to their own advantage. Their lifestyle and way of life was tied to the land.

In reality, the settlement was different. It gave the land to the corporations, whose responsibility as landowners is much different than most Natives realize.

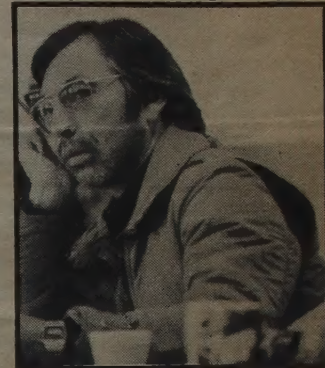
In the short-term, I think there are more rough times ahead for the Native corporations because of the economic climate in which they were formed. The Native corporations were up and running as business institutions when the world was suffering the greatest economic recession since the Depression of the 1930s.

Most of the Native shareholders took the ANCSA goals - in terms of what the corporations would do - very minority group which keeps its that the corporations transferred assets to shareholders when it would have been more productive to keep that capital for investment in the business. As a result of that, the Native corporations, as business institutions, are in a period of retrenchment, looking at the balance sheet, and determining what assets they should and can keep in the long-term.

My hope is that the Native corporations give a long-term

gain to the Native people - that's economic strength. It's highly important to the long-term survival of any minority. A minority groups which keep its separate identity must own or control institutions to make them economically powerful. Then they can influence public policy, social policy and business policy.

Ketzler: My main interest is my home village corpora-



Willie Hensley

tion and all I hope is that it can stay afloat until we have some other mechanism to protect the land. The village corporations are in the same place as the regional corporations, as far as land loss.

Hensley: My vision was the unrealistic hope that we could secure our borders of NANA and have control of the area on which we all lived, in a way that was not too impacted by change. I hoped we would wend our way to the 20th century at our own pace without being pressured by forces we couldn't control.

The corporations are not the first time that we have been hit on a massive scale. Our people have been hit by the missionaries and government and change enforced through psychological means. A little horde of westerners took control of our people's minds.

We thought maybe it's not necessarily bad - there's education, for example - but it enforced a dying of the spirit and the culture. The culture enforces a sense of self-identity and a place in the world and control through small values. When those are obliterated, you've got nothing.

The arrival of the corporations gave us another thing to contend with, to understand. Our people have been flexible and have taken control of western institutions and mastered them and made them work.

I'm optimistic for the future, but the real challenge isn't in the economic or political arena, it's in the internal arena. We have to reach for our tribal roots.

Question: What does ANCSA mean to you?

Mallott: ANCSA was either a one-time opportunity which, more than anything else, gave Native people certain material assets with which they can either determine and establish their own course for the future, or, it is a legislative enactment (Continued on Page Nine)

1991 Resolutions address issues from Stock A

At AFN's July retreat in Dillingham, the following 1991 resolutions were drafted for presentation at the annual convention in October:

84-01

WHEREAS, each Native region and village is entitled to consider and decide its own destiny; and WHEREAS, the decisions of each village and region on the 1991 issues affect other regions, villages, and all other Natives; and WHEREAS, the decisions of each corporation affect other corporations and individuals and each corporation should consider the views of other organizations and the impact of choices on other corporations. NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Natives in convention assembled endorses the concept that whenever a corporation is given an option with regard to a concept, that option shall be exercised by a vote of the corporation's shareholders. BE IT FURTHER RESOLVED, that the Boards of Directors of each corporation shall establish the minimum shareholder vote required to exercise the option but the minimum vote shall not be less than the majority of a quorum of shareholders. No dissenter's rights to stock repurchase by the corporation shall be available if a corporation exercises an option.

Explanation: This resolution applies to all but one of the others. Whenever an option is

available, the decision to do it must be made by a vote of the shareholders. The corporation's board of directors decides what percentage of shareholder approval is required, but the percentage must be at least a majority of a quorum, as set in the corporation's articles or bylaws.

The "dissenter's rights" clause refers to a legal requirement: In certain situations, such as a merger or a major transfer of assets, a shareholder can demand that the corporation buy his stock if he opposes the corporation's action. That could impose a severe hardship on many corporations which don't have enough money to buy out the stock of the minority shareholders. The clause eliminates a dissenter's right to demand that the corporations buy his stock.

There is a precedent for eliminating dissenter's rights. A 1976 amendment to ANCSA did so for Native corporation mergers which take place on or before Dec. 18, 1991.

84-02

WHEREAS, the existing provisions of ANCSA require that the Native corporations issue new stock in 1991 without the absolute prohibition on alienation that is set out in ANCSA; and

WHEREAS, ANCSA permits Native corporations to impose restrictions on the stock which must be issued in 1991; and WHEREAS, the type of restriction on ANCSA stock after 1991

will have a significant effect on the future of the settlement; and

WHEREAS, the Natives must control their own future with respect to the settlement.

NOW THEREFORE BE IT RESOLVED, by the Alaska Federation of Native in convention assembled that the convention endorses the concept that ANCSA should be amended to eliminate the provision for allowing stock alienation after 1991, but that each corporation has the option to permit alienation of stock under the current ANCSA provision.

BE IT FURTHER RESOLVED, that this option may be exercised once prior to December 18, 1991 and thereafter as prescribed by each corporation's bylaws.

Explanation: By eliminating the 1991 provision, the restrictions against selling stock would remain in place. But if a corporation's shareholders wanted to be able to sell their stock after 1991, they could vote to do so. A vote to allow stock alienation could be taken once before Dec. 18, 1991. After 1991, votes to allow stock alienation could be held according to the individual corporation's articles and by-laws.

If a corporation did nothing, stock would not be transferable.

84-03

WHEREAS, many ANCSA corporations may choose to extend stock inalienability after 1991 or to otherwise restrict

stock; and

WHEREAS, some corporations may wish to provide for shareholders who do not wish to own restricted stock by purchasing their shares before 1991 or during any subsequent period of stock inalienability.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Natives in convention assembled endorses the concept that ANCSA should be amended to allow corporations to purchase their own shares before 1991 and during any subsequent period of stock inalienability.

Explanation: Even if stock cannot be sold or transferred, a corporation would be allowed to buy stock from its shareholders who want to sell. That would remove some of the pressure on the corporation from shareholders who want to be able to sell their stock.

84-04

WHEREAS, Alaska Natives have existed as a distinct and unique people from time immemorial and will continue to exist; and

WHEREAS, Congress in passing ANCSA picked an arbitrary single date of 1971 to determine who would be entitled to participate in the Alaska Native settlement; and

WHEREAS, it is not acceptable to Natives to create or continue different classes of Natives and exclude those born after December 18, 1971 or omitted in the original enrol-

ment from the settlement; and WHEREAS, the structure established in the Alaska Native Claims Settlement Act for implementing that Act does not provide an opportunity to provide Alaska Native Elders special benefits which reflect their special contributions; and

WHEREAS, corporations may desire to issue special forms of stock to Native Elders; and WHEREAS, inclusion of New Natives in the settlement structure should not affect revenue sharing under Section 7 of ANCSA.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Natives in convention assembled endorses the concept that ANCSA should be amended to give each corporation the option of offering additional stock to Natives, leaving the price, if any, up to the corporation and eliminating any liability for issuing stock at low or no cost.

Explanation: The ability to offer additional stock to Natives and special classes of stock addresses New Natives and Elders. It also would allow corporations to offer stock to Natives who were alive in 1971, but did not receive corporation stock for one reason or another.

Each corporation would decide whether it wanted to offer such stock and it would set the price, if any, to be charged for the stock.

For example, if the shareholders of Corporation A voted to give shares to every Native born after Dec. 18, 1971, the corporation could do that. If the shareholders in Corporation B wanted to offer stock, but didn't want to "dilute" (reduce) the economic value of their own stock, they could vote to charge full price for the stock.

Under existing law, shareholders in Corporation A who voted against giving shares at no cost might sue the corporation and claim it had diluted the value of their stock. The resolution protects the corporation by eliminating that potential liability.

It also freezes the formula for distribution of 7(i) revenues so that the formula remains regardless of changes in the number of shareholders.

The resolution would allow corporations to distribute special benefits to Elders by creating special stock for them. The special class of stock could carry guaranteed dividends, for example.

84-05

WHEREAS, ANCSA currently permits dilution of Native ownership of ANCSA corporations through inheritance of shares by non-Natives; and

WHEREAS, this provision may be inconsistent with the decisions of some corporations on future transfer of stock to non-Natives.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Natives in convention assembled endorses the

Photo by Paul Brown



King Island Dancers - symbols of life, tradition and values.

(Continued on Page Seven)

Transition to Benefits for Elders and New Natives

concept that ANCSA should be amended to prohibit transfer of stock by any means to non-Natives who are not descendants of Natives, during any period in which a corporation's stock is subject to inalienability restrictions.

Explanation: Although shareholders cannot sell or otherwise transfer their stock until after December 18, 1991, stock is going now to non-Natives in several ways. Non-Natives may inherit stock, or it may be taken to pay child support (from the stock dividends) or a court may award the stock to a non-Native spouse as part of a divorce settlement.

Under existing law, after 1991, stock can be taken by a court to pay debts of any kind.

This resolution would plug the current loopholes which al-

low non-Natives to own stock and it would prevent stock from being transferred to non-Natives in any way, as long as stock is restricted.

The resolution would allow descendants of Natives, regardless of their blood quantum, to inherit stock or to receive it as part of a divorce settlement. For example, if Joe Wasilie is 3/16 Native, he did not receive stock under ANCSA. Even though he is not Native according to the definition in ANCSA, he would still be able to inherit stock.

84-06

WHEREAS, descendants of Native shareholders in many cases may have less than one-fourth Native blood and therefore not be a "Native" as defined in ANCSA; and

WHEREAS, those individuals

may still be regarded as Natives by many ANCSA corporations and should be able to vote any shares they have acquired; and

WHEREAS, ANCSA presently allows corporations to restrict voting rights only to Natives as defined in ANCSA.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Natives in convention assembled endorses the concept that ANCSA should be amended to give each corporation the option of granting voting rights to shareholders who are descendants of Natives.

Explanation: This resolution addresses a problem in the ANCSA definition of "Native." To receive ANCSA benefits, Natives had to prove they had at least one-quarter Native blood. If a Native could not

show documentation of blood quantum, he could be eligible if his Native community considered him a member.

Most people who were descendants of Natives, but had less than one-quarter Native blood, did not receive benefits from ANCSA. Since the stock can be willed to anyone, they can receive stock through inheritance but they cannot vote the stock until after December 18, 1991.

The resolution would allow corporations to give those Native descendants voting rights even though ANCSA now defines them as non-Natives.

84-07

WHEREAS, the relationship of Alaska Natives to their land retained pursuant to the Alaska Native Claims Settlement Act is the relationship which is fundamental to the continuation of Alaska Native culture and to the economic and social well-being of Alaska Native People; and

WHEREAS, provisions of the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act establish mechanisms to prevent Native lands from being transferred out of Native ownership, and

WHEREAS, these mechanisms are not sufficient to protect Native lands from being transferred out of Native ownership after 1991.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Native in convention assembled endorses the concept that all land held by ANCSA corporations shall be deemed deposited in the ANILCA Land Bank. Land can be transferred to a Native organization through a shareholder vote without dissenter's rights to stock repurchase by the corporation and with ANILCA Land Bank protections.

Explanation: Existing law provides some limited protection against loss of undeveloped Native lands. Undeveloped, unleased land is tax-exempt for 20 years from the date it is conveyed to the Native corporation.

Additional protections are available under the Alaska Land Bank Program. The program allows every village and regional corporation to put some or all of its land into the land bank. If the corporation agrees not to develop, mortgage or lease the land, as long as it remains in the land bank, the land may not be taxed, sold to pay bad debts, or lost to trespassers through adverse possession.

Developed land can be put into the land bank, too, but only through negotiations with the Department of Interior. However, developed land would not receive the tax protection.

The resolution would do three things. It would make the Land Bank protections automatic, to eliminate the bureaucratic paperwork now required; it would apply the protections to all ANCSA corporation lands; and it would allow a corporation to transfer its lands to

another Native organization -- such as a non-profit or an IRA -- without losing the protections.

The resolution would also eliminate dissenter's rights to demand that the corporation buy their stock if the corporation did transfer its land to another Native entity.

84-08

WHEREAS, Congress decided to use Western business corporations as the vehicle for implementing the Alaska Native Claims Settlement; and

WHEREAS, such corporations are foreign to Native culture and in many ways inconsistent with Native values; and

WHEREAS, such corporations may not be the best vehicle for implementing the settlement in the future; and

WHEREAS, Alaska Natives should not confuse their Native identity, culture, and heritage with the tools provided by ANCSA corporations, and should be prepared to revise or discard the structure of those corporations.

NOW THEREFORE BE IT RESOLVED, that the Alaska Federation of Natives in convention assembled endorses the concept that ANCSA should be amended to authorize the transfer of corporate assets to a new entity to be composed in the future only of Natives and their descendants, without stock, that can make distributions (excluding land) to individual members. All existing shareholders would be given a lifetime, nontransferable membership. No dissenter's rights to stock repurchase by the corporation would be permitted on the conversion.

Explanation: The last resolution would allow Native corporations to transfer part or all of their land and assets to a new entity which has members but no stock.

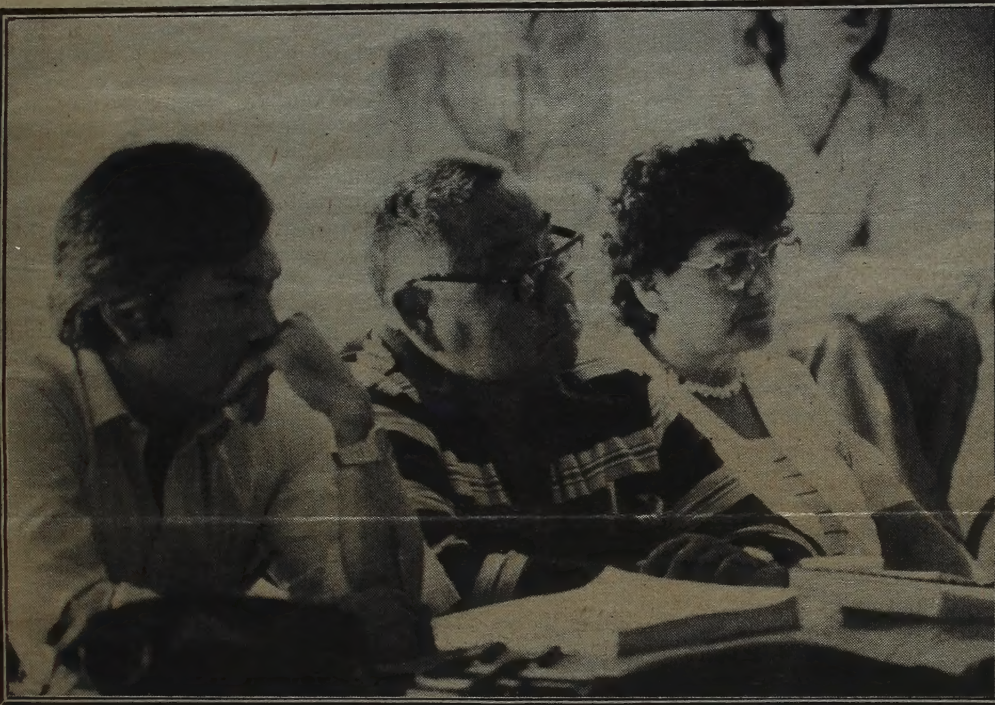
The new entity would eventually be composed only of Natives and their descendants.

To minimize the risk of a successful legal challenge by non-Native shareholders, those non-Native shareholders would be given lifetime membership in the new entity, but their membership would not be transferable. All memberships would expire when the member dies, and only Natives would become members in the future.

The new entity could be an IRA or a non-profit or a new type of organization.

The new entity would be able to make distributions to its members but the entity could not distribute land free of charge.

Land is excluded for two reasons: Free distributions of land to individual members would be contrary to the traditional, community ownership of land. Furthermore, if the entity gave all its land away to its members, future generations of Natives would not be assured use of the land.



Willie Hensley and Robert Newlin, of NANA, and Marlene Johnson of Sealaska at the July retreat in Kotzebue.

Questions and answers

Question: What happens if the convention delegates pass these resolutions?

Answer: The resolutions are policy statements to guide the next phase of work. If the convention delegates pass the resolutions, AFN will study them in even more detail, circulate them for discussion and further refine the concepts.

In early April of 1985, AFN will hold a special, mid-year convention to formally ratify the concepts. Between November and April, AFN will conduct a major information drive in regions and villages to ensure that the Native community understands the concepts. There also may be another retreat of Native leadership during that period.

The resolutions submitted to the October convention will not amend ANCSA. They will, however set the tone for proposed legislation eventually submitted to the Congress. That will probably happen in mid 1985. If

past experience is any indication, it would probably take two to four years to push the legislation through Congress.

Question: How would Native land be protected under these proposals?

Answer: In several ways. If stock is not alienable, Natives won't lose control of the land by losing their stock. Land would be protected from other threats, too.

For example, if a corporation does not put land into the Land Bank, it can be taken by a court to pay taxes the corporation owes or to cover a bad debt. The proposal in Resolution No. 7 would automatically extend the Land Bank protection to all land owned by Native corporations.

Questions: But what if my corporation wanted to use its land to back a loan? If the bank had no way of taking the land, it would not approve the loan.

Answer: If a corporation wanted to use its land that

way, it could voluntarily give up the protection by "withdrawing" the land from the Land Bank.

Question: Why are there so many options here. Shouldn't we just ask Congress to say that stock can not be sold, period?

Answer: Many people would like to do that, but others feel that shareholders should be able to sell if they want to and that the decision should be left to the shareholders of each village and regional corporation. If a corporation wants to make its stock alienable, the shareholders must vote to do that.

Question: I thought that it was illegal for my corporation to provide cash benefits to our Elders. That's what we were told by our attorney.

Answer: Although several corporations were given the same advice, AFN's attorney found that corporations can give cash benefits to Elders if the shareholders vote to do so. (Continued on Page Twelve)



Meeting after meeting. . . In 1970, AFN representatives met with then Interior Secretary Wally Hickel. Photo courtesy of U.S. Department of Interior

A look back: How the settlement came about

Where did the Alaska Native Claims Settlement Act (ANCSA) come from? And why did it come out the way it did?

Books are being written right now to try to answer those questions, but based on discussions and testimony at the Alaska Native Review Commission's Roundtable Hearings in February and March of 1984, comments by attorneys who worked on ANCSA, and other research, the following picture emerges.

The goals of Alaska Natives in the ANCSA movement were clear and straightforward. Although there were aspirations and expectations about what ANCSA would do, the goals boiled down to a single issue: land.

"We are essentially a people to whom land comes first. We are its children; we have emotional ties to it that we can never forget, even down to the generations that no longer live in the old way. It is a basic part of our identity - it makes us feel who we are and without it we have been cut off and bewildered." Al Ketzler, Sr. in testimony given in February, 1968.

"Your grandfathers and mine left this land to us in the only kind of deed they knew. . . by word of mouth and our continued possession. Among our people this deed was honored

just as much as if it was written and signed by the President of the United States. Until recent years, a man's honor was the only deed necessary. Now, things have changed. We need a legal title to our land if we are to hold it." Al Ketzler, Sr. in "Alaska Native Land Claims."

Alaska Natives wanted to protect traditional lands to carry on with the subsistence way of life, the essence of Native life in Alaska for centuries. They wanted to stop the encroachment on those lands by non-Natives in general, but especially by the State of Alaska as it selected lands under its statehood entitlement. They wanted cash compensation for lands previously lost or given up under the settlement. And they wanted the opportunity to improve the living standards of their people.

Certainly, those desires were not new. Alaska Natives had been trying for years to have the Congress fulfill its intention - stated repeatedly since the 1867 Treaty of Cession with Russia - of settling Native land claims.

There was no question of the validity of those claims. Congress had said, again repeatedly, that those claims were valid because of Natives' continued use and occupancy of Alaska.

Such land claims had been settled in the lower 48 through

treaties and creation of reservations: That didn't happen in Alaska because there wasn't cause or really opportunity.

Treaties in the lower 48 generally were the result of conflicts between Indian tribes and the westward expansion of European settlers. But in Alaska, the encroachment of westerners (first Russian, then Americans) hadn't escalated to the kind of full-scale conflicts that had led to treaties in the lower 48.

Even if there had been a need for a treaty, the period of time in which one could have been implemented was short, because four years after the Treaty of Cession with Russia, the President's treaty-making authority was abolished.

The impetus for a Native land settlement in Alaska escalated after the Statehood Act. Alaska Natives were rightfully worried that the state's land selections would take priority over theirs and that traditional Native lands would be lost to the state. And as early as 1962, members of Congress began talking about a Native settlement because they saw the uncertainty over the status of Native lands as an impediment to economic development in Alaska.

Various Native groups had been trying for years to get the land question settled - through the courts and through the federal government. Some of

those efforts were successful; some were not.

Although Congress does appear to have had the best of intentions in ANCSA, the issue of "fairness" to Alaska Natives was not the only motivation behind ANCSA. In 1966, the settlement of Native land claims became the key that would both open the flow of Prudhoe Bay oil to an energy-hungry country and unlock a general push toward development in Alaska.

Alaska Native land claims were elevated to that position by the 1966 decision by Stewart Udall, then U.S. Secretary of the Interior. In response to complaints filed by Native groups, Udall froze further state land selections and construction of the oil pipeline. Nothing would happen on either front until the Native land question was settled.

Alaska Natives wanted their land and the opportunity to participate in the social, economic and political development of the state.

The State of Alaska wanted to proceed with its land selections and it wanted to begin the process of developing the state's promising resource potential.

Oil companies wanted a transportation corridor through the state so they could begin pumping Prudhoe Bay oil, to an ice-free port.

The Congress wanted all of

it - and more.

The Congress, like everybody else in America, was still caught up in the attitudes and atmosphere of President Johnson's "Great Society," the War on Poverty and economic opportunity.

The way to the American Dream was economic development, equal opportunity and minority enterprise. Those were the cures for the plight of disadvantaged minorities.

"It (the mid 1960s) was a time of hope and expectation, a time when federal policy had come to a point where it seemed to be responsive to the concerns and the aspirations of minority people and the economically disadvantaged in this country. . . It was a time in which the social aspirations of a people seemed to have some opportunities for meaningful results. . ." Byron Mallott, Alaska Native Review Commission.

That political and social atmosphere meshed with the tide, at that time, of United States Indian policies to produce the structure of the Alaska Native Claims Settlement Act.

U.S. Indian policies have been compared to a pendulum, which swings back and forth from tribalism to termination. In its pro-tribal phases, the federal government recognizes, respects and encourages tribal structures, values and traditions. In its

(Continued on Page Nine)

ANCSA already amended six times since '71

Leaders' Perspectives

The effort to amend ANCSA is not new. Since the Congress enacted ANCSA in 1971, it has gone back six times to make changes in the law. That does not ensure that the Congress will approve any and all amendments proposed, but the history does illustrate that the Congress has been amenable to making changes.

Some of the amendments have been mainly technical, while others have been lengthy and extensive. The following is a chronological listing of the ANCSA amendments, so far.

1973: Congress approved advance payments from the Alaska Native Fund because of delays in construction of the Trans-Alaska Pipeline.

1976: Congress passed an "omnibus bill" with extensive changes and additions, including:

- Roll reopened for Alaska Natives omitted from the original enrollment.

- Establishment of an escrow account for proceeds derived previously from lands withdrawn for Native selection.

- Native corporations exempted from certain federal securities laws until January 1, 1992.

- Distributions from the Alaska

Native Fund not to be considered as income in eligibility determinations for food stamps.

- Dissenter's rights eliminated in Native corporation mergers or consolidations which take effect on or before December 18, 1991.

- Klukwan Village Corporation allowed to make new land selections.

- Changes in land selections and selection process for Chugach, Yakutat, Cook Inlet Region, and Koniag.

- Authorization for land exchanges between Native corporations and the state or federal government.

1977: Validation of "assignments," allowing regional corporations to borrow against future payments from the Alaska Native Fund.

1978: Allowed oil, gas and mineral exploration on Native lands without loss of tax protections on otherwise undeveloped land.

1980 (Dec. 2): Alaska National Interest Lands Conservation Act (ANILCA):

- Changed the date on which stock restrictions would ex-

pire, from January 1, 1992, to December 18, 1991. New wording added to allow other stock restrictions, as provided by a corporation's articles, or by agreement between a corporation and its shareholders. Also described two such options — denial of voting rights to non-Natives, and right of first-refusal.

- Established the Alaska Land Bank Program.

- Extension of tax-exemption on undeveloped land, to 20 years after conveyance, instead of 20 years after ANCSA.

- Set statute of limitations on state challenge of submerged lands determinations.

- Required approval (under certain conditions) of Native allotment applications that were pending on or before December 18, 1971.

- Supplemental appropriations to Native groups, with the amount determined by population.

- Easement limitations on Native corporation or Native group lands.

1980 (Dec. 5): Disenrollment, by request, of Metlakatla Indians.

Continued from Page Five

with material assets prone to be so complex and cumbersome as to serve to destroy our people.

My strong belief is that it will be the former and ANCSA, more than anything else, means the Native people have the opportunity to secure their future.

Ketzler: My view of ANCSA is very personal, it is the culmination of many years' involvement in the Native movement. But to the point that I just want to protect the land. The money doesn't mean that much to me. I'd like to see it get to the people.

ANCSA is still very much part of my life. I still work for Native rights. My concern is that the people out on the rural land benefit from the land and have use from it. I felt many emotions as the first patent came to our village because the settlement took them years to achieve. That part still stands,

although I think the structure should change.

I don't think we can be both corporate people and Indians. If we are both, we are the corporate people from 8 to 5 and Indians from 5 to 8. That doesn't fit together.

Hensley: ANCSA means we didn't get totally inundated. We have something to work with to try to protect areas to protect our survival. It means we interface with a system of government and a political system. We have our little say and all you can make of it.

We can sit and moan and groan about the loss of land, but if you are the victor, you are under no obligation to give anything back. In a sense, we were defeated without arms. In the lower 48, the Indians were defeated with arms and they were left a small amount of land. We got much more.

ANCSA provides an arena to help our people participate in the system.

"There was a hit-and-miss job of carving up the state. The truth is that Congress was very much against a form of tribal government and having it in any form." — Willie Hensley.

A look back

Continued from Page Eight

termination phases, the federal government discourages tribalism and encourages assimilation, break-up of tribes, the adoption of western values and ways, and termination of its special relationship with Indians.

By the mid and late 1960s, the U.S. Indian policy had begun to swing back from assimilationist to pro-tribal. The country was more sensitive to racial and ethnic minorities. That sensitivity brought more recognition of the value of cultural diversity.

Yet the swing to tribalism was not complete. There was still an underlying assumption that what everybody wanted was to participate in the best that America had to offer, in terms of individual prosperity and opportunities to attain that prosperity.

Most of the Native energy during the land claims effort was focused on how much land they would receive title to, the location of that land, and the amount of money to be received as compensation for land given up.

But the structure for implementing the settlement was not

totally ignored. The Congress made it very clear that it had no intention of setting up new reservations. The Congress saw the extreme poverty and problems in lower 48 reservations and it had no intention of repeating that. IRAs were also considered.

"We had had experience with IRAs in Southeast Alaska. The IRAs had managed the canneries in Angoon and there had also been working relationship involving Hydaburg and Klawock. The experiences were very discouraging and really did not work out too well for those two communities. There was a tendency by Interior at that time to interfere more. . . if (the relationship with Interior had been more like it is today) I really think IRAs may have been considered more seriously. . ." John Borbridge, Alaska Native Review Commission.

It isn't clear where the idea for a corporate structure came from. Some sources say it first emerged in a report by then-Governor Wally Hickel and was carried through the various drafts.

Considering the past exper-

iences in the lower 48 and the political and social atmosphere of the time, a corporate structure appears now to have been a logical, if novel, approach.

"As I see it. . . the Natives were presented with a series of alternatives to settle, most of which revolved around the central idea of changing their claims, which were non-productive resources in the present sense, into productive resources. That is, land owned in fee simple and money to develop that land a structure which permitted them to develop it." Guy Martin (legislative assistant to Congressman Nick Begich, during ANCSA), Alaska Native Review Commission.

The Congress apparently saw it as a means of promoting economic, political and social development of Alaska Natives, but with the Natives themselves making their own decisions — as corporate leaders and shareholders — instead of relying on the paternalism and authority of the Department of the Interior.

In other Indian settlements — in reservations and IRAs — decisions were subject to the approval of the Secretary of the Interior; land was held in trust

for the Indians. ANCSA was different; it was unique; it was new and exciting.

Alaska Natives would have clear title to their lands; they would have the assets with which to build corporations that they would own, control and manage.

ANCSA clearly did not terminate the Alaska Natives' special relationship with the federal government. It clearly would not replace or diminish other federal Indian services or programs. It was not welfare. It was not a handout.

But while ANCSA clearly stated the above, there also seems to have been an underlying expectation in Congress that through ANCSA, Alaska Natives would gradually assimilate — economically, politically, socially — into the American mainstream and would no longer need the benefits of federal Indian services and programs.

"That possibility (of stock alienation and land loss) would be rooted on. . . normalcy, normal commercial behavior, a movement toward business as usual, a movement toward providing a sameness for the Native population in terms of the legal

recognition and treatment that it had. That is, being like everybody else. It's got nothing to do with cultural traditions, but in part of one's life, it's important to be like everyone else. . .

" . . . I think that self-determination and the kind of de-emphasizing differences and emphasizing sameness was what did surround the act." Doug Jones (member of Federal Field Committee staff and staff to Senator Mike Gravel), Alaska Native Review Commission.

Jones' description of Congress' thinking does not mesh with what the Native community anticipated. Certainly, different Natives expected different things from ANCSA.

Many Natives expected that their land would finally be protected, in perpetuity. Others expected more: that the land and corporations would lead to healthy village economies, more jobs, reduced social ills and a strengthening of traditional Native values and Native culture.

Thirteen years later, Alaska's Native community is measuring the expectations and aspirations of 1971, against the reality of 1984 and the prospects for 1991.



Joe Upicksoun and Byron Mallott were among those who talked about ANCSA at the Alaska Native Review Commission's round table discussions.

The work in progress -- more lies ahead

After more than two years, the Alaska Native community's internal work on 1991 is approaching completion. In April, 1985, the effort will shift gears, from negotiation and study within the Native community, to lobbying the Congress for amendments to ANCSA.

The draft resolutions prepared at AFN's September retreat in Dillingham represent a two-year process of study, analysis, convention resolutions, negotiation and compromise — all leading toward approaches that will address and satisfy both 1991 concerns and the variety of perspectives within the Native community.

The 1991 work began in 1982, when AFN commissioned a report by the Alaska Native Foundation, to examine 1991 issues. At the 1982 AFN Convention, a panel of attorneys presented a workshop to explain those issues. Delegates at the 1982 Convention told AFN to make 1991 its highest priority for the coming year.

In 1983, AFN held two retreats, in Kodiak and Valdez, at which the Native leadership examined and refined the issues and identified the work to be done. The 1983 retreats produced draft resolutions that were presented to delegates at the 1983 AFN Convention.

The 1983 Convention was devoted to 1991: major speak-

ers addressed it, Native leaders explained the issues, and on the final day, the delegates worked out amendments and passed a package of eight special resolutions directing AFN's work for the 1983-1984 year.

Most of the 1983 resolutions called for studies of the legal and practical implications of various approaches to the 1991 issues: stock alienation and protection, land protection, New Natives, the corporate structure and special benefits for Elders.

The studies were done by veteran ANCSA attorneys Ken Bass, Don Mitchell, Jim Wickwire and Chuck Goldmark. Their reports were presented in preliminary form at the Kotzebue 1991 retreat in July.

At that retreat, the participants — representing village, regional, non-profit and tribal interests, among others — drafted six "concepts." The concepts were draft policy statements establishing specific 1991 goals through amendments to ANCSA.

The retreat participants took the concepts back to their boards and communities to determine whether the concepts were acceptable and to elicit discussion about the details that must be addressed.

Those comments and reaction

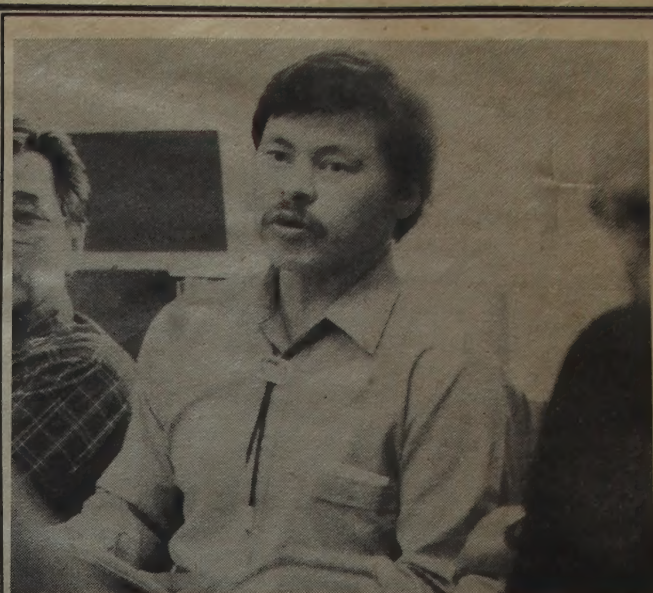
to the concepts were laid out in September at the last retreat in Dillingham, where differences were negotiated. The result is the eight draft resolutions approved for presentation at the 1984 Convention.

Delegates at the convention will attend three workshops on the 1991 resolutions and the feedback from the workshops may result in changes to the resolutions on the convention floor.

As passed by the delegates, the resolutions will be further refined for a special mid-year 1991 convention in early April of 1985.

Between the end of October and April, the resolutions will be circulated and discussed in regions and villages throughout the state, to ensure that as many Natives as possible understand them and have the opportunity to comment on them. During that period, there may also be another retreat of Native leadership to review the details and any changes.

The proposed legislation will be ratified at the April convention. After that, AFN will begin the long process of lobbying Congress. Based on past experience, it will probably take two to four years to push the legislation through the Congress.



Elijah Rock and Arnold Brower, Jr. were members of a large Arctic Slope contingent at the September retreat.



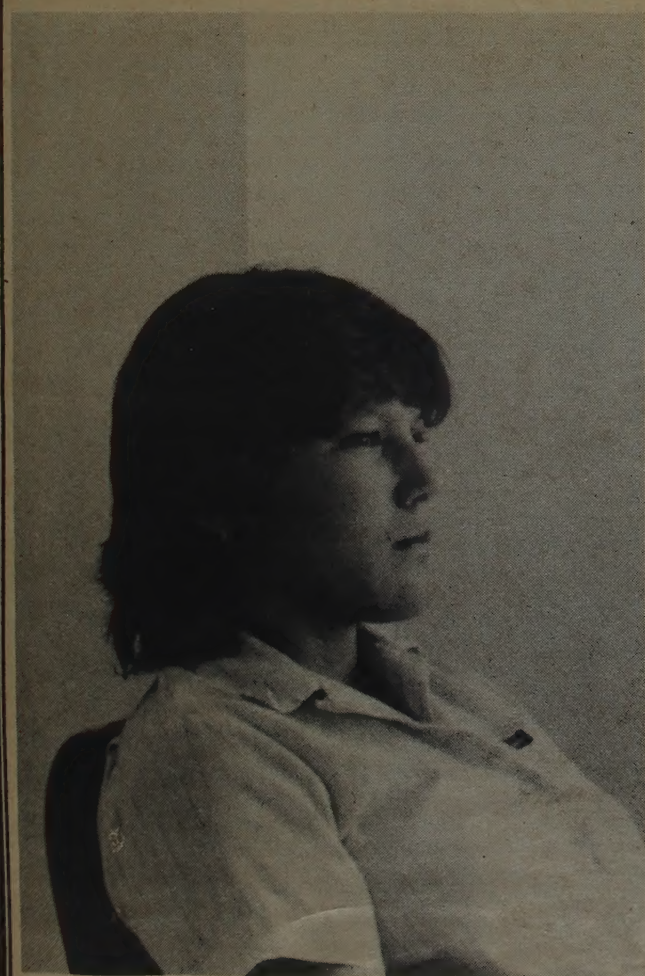
Elders and youth gave their perspectives on 1991 during the 1983 AFN Convention.



A television program on 1991 - with Willie Hensley, Charlie Johnson and Roy Huhndorf, was produced and broadcast statewide. Tapes of the program were also made available for village and regional meetings.



Working on 1991



Youth, too. . . Valerie Davidson, a Calista shareholder and president of the AFN Youth Council, participated in the July 1984 retreat.

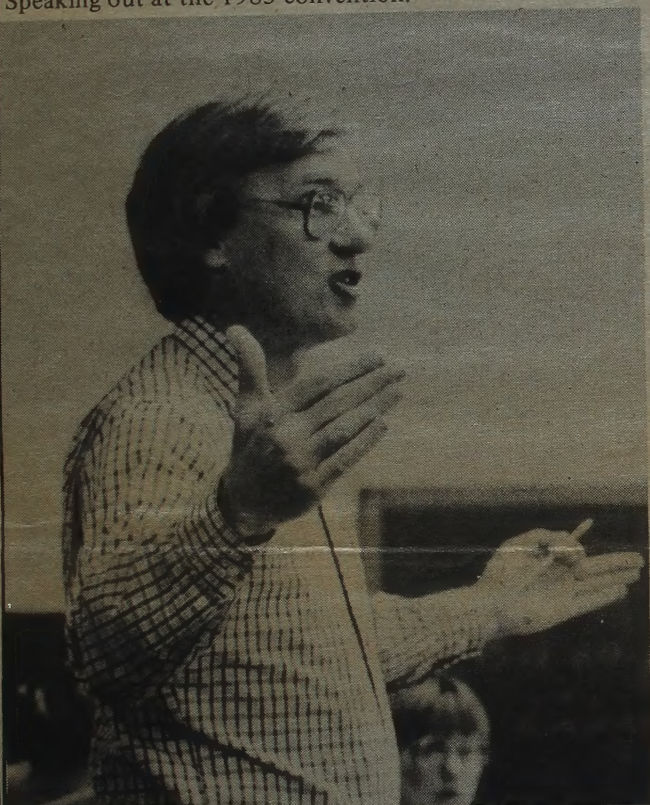
1984: A Year's Worth of Study, Analysis, Talk



Speaking out at the 1983 convention.



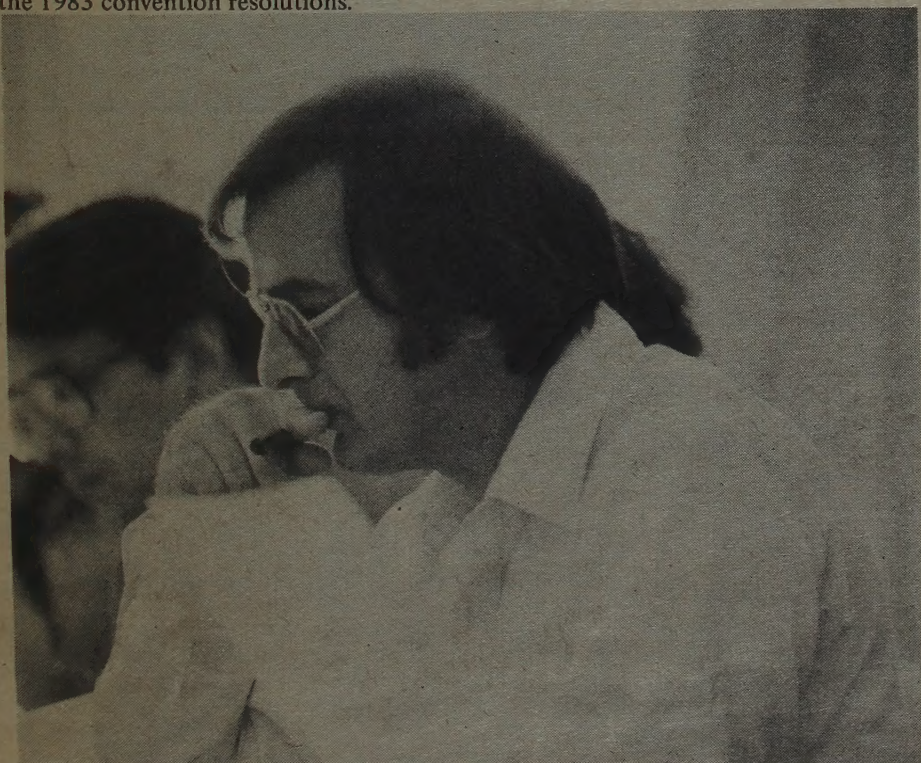
A lot of listening, talking and thinking - Gordon Pullar (Kodiak Area Native Assoc.) and Elders Alfred Wells and Billy Sheldon at the 1991 retreat in Kotzebue.



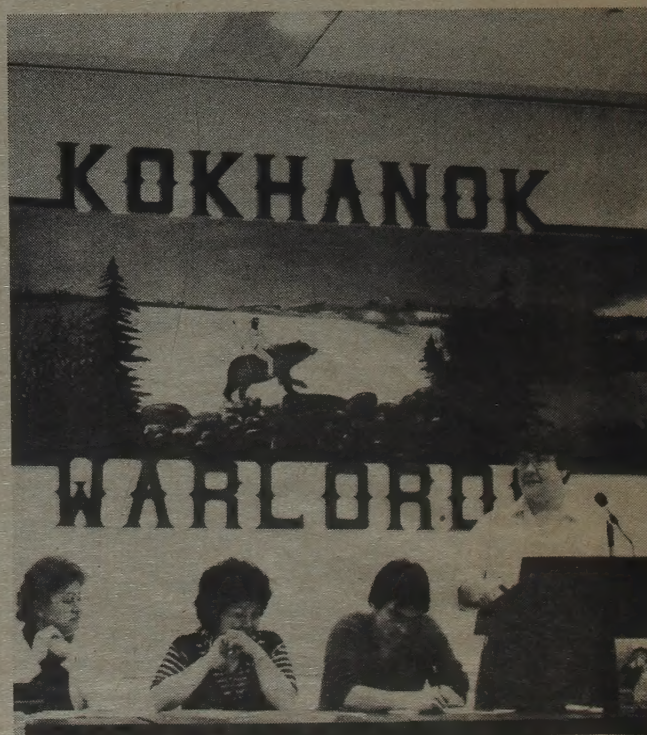
Attorney Ken Bass explains a legal point. He was one of three attorneys hired to study 1991 issues, pursuant to the 1983 convention resolutions.



Patty Harper, of KYUK-TV in Bethel, interviews AFN President Janie Leask about 1991. Leask spoke on ANCSA and 1991 at Kuskokwim Community College in March.



Spud Williams of Tanana Chiefs Conference ponders a problem during the September retreat on 1991.



Don Nielsen, vice president of Bristol Bay Native Corp., traveled to Kokhanok to talk about 1991 at the annual meeting of Alaska Peninsula Corp.

Questions about the Resolutions

Continued from Page Eight
holders vote to write that into the corporation's articles.

The problems still remains, however, that an Elder who receives cash from his corporation could lose his eligibility for government welfare services, since the cash would be counted as income.

It does not look very likely that the Congress would agree to exempt cash payments from eligibility determinations because the U.S. Treasury Department would strongly oppose it.

Even though corporations can provide special benefits to Elders now (if the shareholders approve it through an amendment to the corporation's articles), the proposal in Resolution No. 4 affirms that, by allowing corporations to issue special classes of stock.

Question: Would any of these resolutions address Native sovereignty and IRA's?

Answer: No. But they would alleviate some of the fears about loss of Native lands, and objections to the corporate structure. For example, they would allow corporations to transfer their assets to a non-corporate orga-

nization, such as an IRA or other tribal entity.

Question: If the Congress passes these amendments, would we have to do something, or would they be automatic?

Answer: One of the proposals -- to prohibit any stock transfer to non-Natives who are not descendants of Natives -- would be automatic, with no provision for opting out.

Two of the proposals -- to eliminate the lifting of stock restrictions; and Land Bank protections -- would be automatic, but with an opt-out ability. In other words, a corporation could choose not to have the Land Bank protections or choose to make stock alienable, but it would have to opt-out. If a corporation took no action, the changes would automatically take effect.

Under the other proposals -- offering stock to Natives; granting voting rights to Native descendants who have less than one-quarter blood quantum; transferring land or other assets to another Native organization; and a corporation buying stock from its shareholders -- the corporation's shareholders would have to vote to take

advantage of the options.

Question: How do all of the proposals fit together?

Answer: AFN has been describing them as a "Chinese menu," from which a corporation could pick the ones it wanted. Continuing with that analogy, if a corporation picked the proposals in Resolutions No. 7 and No. 8, it would not need any of the other selections, because those two together address just about every 1991 issue: land protection, eliminating stock altogether and membership instead of shareholders.

Another corporation might want to keep the corporate structure and allow stock to be sold, but protect its land. That corporation could vote to allow stock alienation but transfer its land to another Native organization, with Land Bank protections.

If Congress enacts these proposals, each village and regional corporation would have a big selection to choose from. It is important to remember that these proposals could still be changed before they are submitted to the Congress.

Protecting the land

Continued from Page Two
or traditional council could get those protections if either of two things happened. First, if the Secretary of the Interior agreed to take the land back into trust for the IRA or traditional council, then the land would be protected. Second, the land would be protected if the IRA or traditional council is a federally-recognized tribe.

In 1978, the Venetie Village corporation transferred its land to the IRA village of Venetie and the IRA asked the Interior Secretary to take the land into trust. The secretary refused on grounds that to take the land back into trust would violate the spirit of ANCSA, since ANCSA said that permanent, racially-defined institutions were not to be created.

That 1978 decision is still the position of the Department of Interior. Even though Interior refused Venetie's request, the village corporation went ahead

and transferred its land to the Venetie IRA.

IRA corporations and traditional councils may own land whether or not the Interior Secretary takes it into trust. Land owned by an IRA or traditional council would be fully protected if the IRA or traditional council is a federally-recognized tribe. Although Native villages are considered tribes for specific purposes, it is not at all clear whether they have the federal recognition needed to ensure land protection.

a corporation transferred its land to an IRA or traditional council -- or to a different, non-profit Native entity -- the land would be protected from loss through sale of corporate stock.

Complete protection of Native lands -- from loss through bad business decisions, sale of corporate stock, taxes, debts, eminent domain and adverse possession -- would require amendments to ANCSA.

The corporate structure

Continued from Page Four
fers to IRAs see story on page -- 2.)

Legal issues also come into play. Under the Alaska Corporate Code -- which applies to Native corporations -- a corporation may not transfer the bulk of its assets without approval from two-thirds of its shareholders. Furthermore, under state law, shareholders who object to the transfer of assets may claim "dissenter's rights" and demand that the corporation buy their stock.

If the corporation transfers its assets to another entity and charges either no money or only a small amount for the assets, the corporation would be vulnerable to a lawsuit by its shareholders on grounds that the corporation was wasting its assets.

Amendments to ANCSA or state law would reduce the legal risks.

If a Native corporation wanted to become a non-profit entity, it might be able to do so, although again there would be legal risks, unless ANCSA or Alaska law is amended.

A corporation might switch to a non-profit through either a merger or a reorganization. However, under Alaska law, a for-profit corporation cannot merge with a non-profit, so a change in state law or in ANCSA would be required.

In a reorganization, the corporation would transfer its assets to a new or existing non-profit entity, while leaving the stock

in the old corporation. Since all the corporation's assets would be in the non-profit, the corporation would be an empty shell. There would still be corporate stock but it would have no value because the non-profit entity would own all the valuable assets.

In either case, a merger or a reorganization, two-thirds of the shareholders would have to approve the change and dissenting shareholders would have the right to cash out (demand that the corporation buy their shares), unless either state or federal law is amended to eliminate dissenters' rights.

It is important to note that non-profit doesn't necessarily mean tax-exempt. In fact, the tax-exempt status is very restrictive and difficult to get. Also, non-profit organizations in Alaska cannot make distributions to their members unless and until it is dissolved.

There are different types of organizations, besides tribal entities and non-profit membership groups, that could be considered, even if ANCSA is not amended.

Each of the different types allow for different kinds of restrictions that regular corporations don't have. However, none of them would place a total ban on stock transfers; such a total stock restriction would be the most difficult to implement without an amendment to ANCSA.

Conversions that might be possible without amending ANCSA include conversion to a "close corporation," a "lim-

ited partnership," or a "cooperative corporation."

The most attractive of the three -- in terms of addressing Native concerns about 1991, without changes in existing law -- is the cooperative corporation, which is legal under Alaska law.

A cooperative corporation has members and may establish terms and conditions of membership. Members own membership stock, but the cooperative can restrict the issuance and transferability of the stock.

There may also be "capital stock," owned by non-members, but voting rights are usually limited to the members of the cooperative, except on certain issues that affect the capital stock.

Although a cooperative corporation may appear attractive, it has not been studied enough to know whether it would be a useful alternative to the current ANCSA corporate structure.

Any change in the existing corporate structure presents some degree of legal risk, and some changes would present more risk than others. Changes in state law or in ANCSA would reduce those risks of challenge, but they would not eliminate completely the possibility of a lawsuit.

Any changes which reduce the sale value of Native stock might raise protests from shareholders who want to be able to sell their stock, and sell it at the highest possible price. That is the sacrifice that all Native shareholders would have to make, if the corporations want to remain Native.



Don't forget how to laugh - Della Keats

Photo by Paul Brown

Stock alienation

(Continued from Page Three)
stock has generated the biggest concerns in the Native community.

Some shareholders may be offered large sums of money for their stock. The offers could come from other Natives, from non-Native individuals and from large corporations.

A shareholder might not know if the potential buyer is part of a takeover attempt since corporate takeovers do not have to be announced until the buyer already owns five percent of the corporate stock.

A Native corporation can do some things to try to protect itself against a takeover and there are measures that would

discourage or prevent outsiders from buying up Native stock. (For a description of those approaches, see the story on page -- 4.)

The protective measures include changes to a different kind of corporation, amendments to the corporate bylaws and articles and major changes to the corporate structure, itself.

Some of the measures would require approval from the shareholders and almost any change -- whether to the corporate structure or to stock alienation after 1991 -- may carry some legal risk. Amendments to ANCSA would reduce the risks, but not eliminate them, altogether.